



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,762	02/23/2004	Jacob Richter	02600/48004	7647

23838 7590 05/06/2005

KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON, DC 20005

EXAMINER

WILLIAMS, CATHERINE SERKE

ART UNIT PAPER NUMBER

3763

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,762

Applicant(s)

RICHTER, JACOB

Examiner

Catherine S. Williams

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3 total.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of the species of Fig 6 and claims 11-15 in the reply filed on 2/18/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Priority

The current status of application number 09/964,836 as –now abandoned—must be included in the first paragraph of the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Lipkovker (USPN 5,421,816). Lipkovker discloses an ultrasonic transdermal drug delivery system that includes a housing (81), a compartment (67), an oscillating member (65), a medicament port (69), and a sensor (71). The oscillating member is adapted to oscillate in response to ultrasonic stimulation since member 65 is a piezoelectric transducer. Since the port is a separate component, it can be removed and replaced and therefore is adapted to permit a medicament to

Art Unit: 3763

be introduced into and contained. Since the port is a membrane, it is adapted to selectively release the medicament from the compartment. The sensor is adapted to receive temperature information and is electrically connected to the control (63). Since the sensor is electrically connected to the control (63) the sensor is adapted to communicate and selectively energize any electrical component including a means for selectively generating and transmitting ultrasonic vibrations. The control (63) is considered a means for calculating the duration of the ultrasonic vibrations.

Regarding the claim limitations of “means for selectively generating and transmitting ultrasonic vibrations” (claims 12 and 15) and “means for calculating the duration of the ultrasonic frequency”, it is assumed that applicant is invoking 12 6th paragraph. These limitations have been interpreted as means plus function recitations. Based in the instant specification the “means for selectively generating and transmitting ultrasonic vibration” is any structure or mechanism for generating and transmitting ultrasonic vibrations, e.g. a piezoelectric crystal, since the specification does not set forth any further description of the means. Additionally, the “means for calculating” has been interpreted in the same way and is considered any structure or mechanism for calculating, e.g. a processor, since the specification does not set forth any further description of the means.

Claims 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Currie et al (USPN 5,366,454). Currie discloses an implantable medication dispensing device that includes a housing (12), a compartment (16), an oscillating member (24), a medicament port (20), and a sensor (see 4:57-64). Since the port is a separate component, it can be removed and replaced and

Art Unit: 3763

therefore is adapted to permit a medicament to be introduced into and contained. The device includes a means for generating and transmitting an ultrasonic vibrations (34,32,36). The device includes a circuit (58) which is the means for calculating.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 571-272-4970. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Catherine S. Williams
April 29, 2005